

contain the primary constituent elements for habitat designation.

*Our Response:* We made revisions to the unit boundaries based on information supplied by commenters, as well as information gained from field visits to some of the sites. This new information showed that the primary constituent elements were not present in certain portions of some of the proposed units and that recent changes in land use had occurred that would preclude those areas from supporting the primary constituent elements in the future, or that the areas should not be considered essential to the conservation of the species in question. In many cases, critical habitat boundaries were reduced for multi-island species because we have proposed or otherwise identified adequate and more appropriate habitat on other islands. In addition, some areas excluded from this designation, such as TNCH lands, will still contribute significantly to the recovery of these species. These areas are counted towards the recovery goal of 8 to 10 populations of 100, 300, or 500 individuals.

(2) *Comment:* One commenter was concerned that there is an absence of good scientific data on the plants in this rulemaking and stated that guesswork is an unacceptable way to designate critical habitat.

*Our Response:* When developing this rule to designate critical habitat for 46 plants from Molokai, we used the best scientific data currently available, including but not limited to, information from the known locations, site-specific species information from the HINHP database and our own rare plant database; species information from the Center for Plant Conservation's (CPC) rare plant monitoring database; the final listing rules for these species; information received during the public comment periods and the informational meetings and public hearings held on Molokai on September 9, 2002; recent biological surveys and reports; our recovery plans for these species; GIS information (e.g., vegetation, soils, annual rainfall, elevation contours, landownership); information received from landowners, land managers, and interested parties on the island of Molokai; discussions with botanical experts; and recommendations from the Hawaii Pacific Plant Recovery Coordinating Committee (HPPRCC) (GDSI 2000; HINHP Database 2000; HPPRCC 1998; Service 1995, 1996a, 1996b, 1997, 1998a, 1998b, 1999, 2001; 65 FR 83158; 67 FR 16492; CPC *in litt.* 1999).

In accordance with our policy on peer review published on July 1, 1994 (59 FR

34270), we solicited the expert opinions of knowledgeable and independent specialists regarding the proposed rule. The purpose of this peer review was to ensure that our designation methodology of critical habitat of Molokai plants was based on scientifically sound data, assumptions, and analysis. The comments of the peer reviewers were taken into consideration in the development of this final designation and nondesignation. We are required under a court-approved stipulation to finalize this designation by February 28, 2003. If provided with new information, we may revise the critical habitat designation in the future.

(3) *Comment:* One commenter felt that the Service's definition of a population is not adequate.

*Our Response:* We acknowledge the difficulty in identifying a discrete, quantitative distance between populations but believe, as do the peer reviewers who commented on this issue, that the use of 1,000 m (3,280 ft) is a scientifically reasonable convention. We have defined a population, for the purpose of this rule, as a discrete aggregation of individuals located a sufficient distance from a neighboring aggregation such that the two are not affected by the same small-scale events and are not believed to be consistently cross-pollinated. In the absence of more specific information indicating the appropriate distance to assure limited cross-pollination, we are using a distance of 1,000 m (3,280 ft) based on our review of current literature on gene flow (Barret and Kohn 1991, Fenster and Dudash 1994, Havens 1998, Schierup and Christiansen 1996).

(4) *Comment:* One peer reviewer suggested that sites significantly altered by human activities, such as roads and buildings, should not be included in "conservation plans," but that areas that have been altered by agriculture and other activities that do not significantly disturb the soil should be included as they provide potential sites for restoration of plant species.

*Our Response:* Agricultural lands are generally not considered to be the highest ranking places to designate critical habitat because they usually have had the most disturbance. However, for some species some of this land is essential for their conservation because suitable habitat does not exist elsewhere. Approximately 11 percent of designated land on Molokai is within the State Agricultural District.

(5) *Comment:* One commenter stated that the presence of an endangered species in a particular habitat is not necessarily an indication that such habitat is best for the species' survival

and reproduction. For example, conservationists believed that the Hawaiian goose (nene) (*Branta sandvicensis*) preferred uplands because it remained extant in upland habitats, but later information suggests that the nene prefer lower elevations.

*Our Response:* The best available information, both historic and current, was used from a variety of sources (see "Methods" section) to determine the primary constituent elements. Historic information is scant for many species. However, the Service remains obligated to use the best available information, which includes the characteristics of the habitat supporting a taxon's remaining individuals. We expect more will become known in the future about the specific life history needs of these species, but we believe at this time that we have used the best available scientific information, including peer review and expert scientific input.

(6) *Comment:* One peer reviewer and other commenters stated that the proposed rule is improved by the inclusion of appropriate unoccupied habitat because such habitat will help to recover species that have been reduced to an unsustainable number of populations. Several commenters opposed designating critical habitat in unoccupied areas. Two commenters wrote that the lands in urban, agricultural, and rural districts are designated, used, and intended for a wide variety of land use activities. As such, there is a much greater likelihood that critical habitat designation will have an adverse economic impact on the landowner. These commenters recommend the following rebuttable presumption: Non-conservation lands that are unoccupied by any listed species should not be designated as critical habitat.

*Our Response:* Our recovery plans for these species identify the need to expand existing populations and reestablish wild populations within historical range. Because of the very limited current range of these species, designating only occupied areas would not meet the conservation requirements of the species. Occupied areas, as well as the similar habitat around them within the designated units of critical habitat that may be occupied in the future, provide the essential life-cycle needs of the species and provide some or all of the habitat components essential for the conservation (primary constituent elements) of these species. Additional, nonadjacent, areas of unoccupied habitat are essential to the conservation of the species because they provide habitat for the establishment of new populations.